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No. 374

Supreme Court of the United States

OCTOBER TERM, 1947

BOB-LO EXCURSION COMPANY, a Michigan Corporation,

Appellant,

against

THE PEOPLE OF THE STATE OF MICHIGAN.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

BRIEF OF THE AMERICAN JEWISH CONGRESS AS *AMICUS CURIAE*

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ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

BRIEF OF THE AMERICAN JEWISH CONGRESS AS *AMICUS CURIAE*

Interest of the American Jewish Congress

The American Jewish Congress was organized in part "* * * to safeguard the civil, political, economic and religious rights of Jews everywhere" and "* * * to help preserve, maintain and extend the democratic way of life".

In the three decades of its existence the American Jewish Congress, on frequent occasions, has represented the democratic interests of the Jewish people before the courts, legislatures and administrative tribunals of the State and Federal governments. Its work, however, has never been confined to the interests of the Jewish people alone. It believes, indeed, that Jewish interests are threatened whenever persecution, discrimination or humiliation are in-

flicted upon any human being because of his race, creed, color, national origin or ancestry.

In accordance with these principles, the American Jewish Congress has long held that, as stated by the President's Committee on Civil Rights (Report, p. 135, Government Printing Office, 1947): "All of our governments, federal, state, and local, must be uncompromising enemies of discrimination, which is prejudice come to life." The statute which is invoked in the present proceeding rests on just that principle. The attack upon that statute is an attempt to limit the power of state governments to enact laws designed to suppress the evil of racial discrimination. Such an attempt is a matter of deep concern to the American Jewish Congress and requires that it submit its views to this Court.

Counsel for appellant and appellee have consented to the filing of this brief.

Statement of the Case

The appellant challenges its conviction under the Michigan Civil Rights Statute on the charge of refusing to carry a Negro passenger on its vessel. It contends that application of that statute to its operations is an infringement upon the grant to Congress of the power to regulate foreign commerce. The question presented is whether the State of Michigan may by statute require the operator of a public conveyance to make its facilities available to all persons, regardless of their race or color, where the conveyance is engaged in carrying passengers from a Michigan port to an island in Canadian waters and back to Michigan.

The facts disclose that appellant's vessels carry excursion passengers from Detroit to Bob-Lo Island in the Canadian waters of the Province of Ontario, Canada (R. 6). The island is owned by the appellant, except for a small area which is fenced off from the rest of the island (R. 6). Appellant has erected amusement buildings, athletic

grounds, bathing beaches, restaurants and other facilities on the island, for use during the summer months (R. 6). Two vessels are operated from Detroit to Bob-Lo Island, each carrying up to in excess of 3,000 passengers (R. 6). During the summer of 1945 approximately 500,000 passengers were carried on the two boats to Bob-Lo Island (R. 8). The appellant advertises for passengers in three Detroit newspapers and also uses street car advertising (R. 11). There is no means of access to Bob-Lo Island except by way of the appellant's vessels (R. 8).

The appellant, a Michigan corporation (R. 5), is not subject to rate or other general regulation by any Federal or State agency (R. 7), but it is subject to steamboat inspection by the United States Navy Department (R. 8-9) and is licensed by the United States Customs Service with respect to customs on dutiable goods (R. 8).

On June 21, 1945, appellant ejected Sarah Ray from its excursion boat and refused her passage on the ground that she was a Negro (R. 3-4). This was admitted by appellant (R. 6). The appellant's conviction on the charge of violating the Michigan Civil Rights Statute (R. 35) and judgment imposing a fine of twenty-five dollars (R. 13), were affirmed by the Michigan Supreme Court (R. 44, 48).

The Statute Under Which Appellant Was Convicted

The Michigan Civil Rights Statute under which appellant was convicted provides as follows (Act No. 117, 1937 Pub. Act; Mich. Stat. Ann. 1946 Cum. Supp., Section 28.343, also designated as Section 17115-146-147; Mich. Comp. Laws 1940):

> Sec. 146. All persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of inns, hotels, restaurants, eating houses, barber shops, billiard parlors, stores, public conveyances on land and water, theaters, motion picture houses, public educational in-

stitutions, in elevators, on escalators, in all methods of air transportation and all other places of public accommodations, amusement, and recreation, where refreshments are or may hereafter be served, subject only to the conditions and limitations established by law and applicable alike to all citizens and to all citizens alike, with uniform prices.

Sec. 147. Any person being an owner, lessee, proprietor, manager, superintendent, agent or employee of any such place, who shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages, facilities and privileges thereof or directly or indirectly publish, circulate, issue, display, post or mail any written or printed communications, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed or color or that any particular race, creed or color, is not welcome, objectionable or not acceptable, not desired or solicited, shall for every such offense be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifteen (15) dollars nor more than one hundred (100) dollars or shall be imprisoned in the county jail for not less than ten (10) days nor more than ninety (90) days or both such fine and imprisonment in the discretion of the court.

Summary of Argument

This is not a segregation case. It is a case of discrimination against a Negro by a complete denial of facilities and accommodations made available to persons of other races and colors. It is our contention that a State may by statute require the operator of public conveyances to make its facilities available to persons of all races and colors in carrying passengers from a port within the State to an island in foreign waters and back.

The validity of legislation prohibiting such discrimination in intrastate commerce has been established by this

Court as a proper exercise of the State's police power. In the absence of Congressional action (the appellant is not a common carrier as defined by the Interstate Commerce Act), a State statute regulating carriers will not be invalidated, as applied to interstate or foreign commerce, unless it imposes an undue burden on the commerce. A finding of undue burden requires a factual determination that the State police power must yield because of a compelling national requirement of uniformity of regulation of the particular subject in interstate or foreign commerce.

There is no national interest in striking down a State requirement that public conveyances engaged in foreign commerce open their facilities and accommodations to persons of all races and colors. The State statute is no more than an extension to public conveyances of the common law duty to provide equal facilities to all persons, a duty which this Court has held the State may require of common carriers engaged in interstate commerce. The vice in State regulations of interstate or foreign commerce which have been invalidated by this Court by reason of the unexercised grant to Congress of the commerce power, namely, the danger of undue burdens on the commerce through conflicting and diverse State regulations, is absent in the present case. No State can constitutionally require interstate or foreign carriers or conveyances to discriminate in their accommodations or facilities by reason of the race or color of passengers in view of the Equal Protection Clause of the Fourteenth Amendment. That clause thus insures uniformity of any State regulation which may be adopted. No undue burden is, therefore, imposed on commerce by the Michigan civil rights regulation challenged by the appellant.

ARGUMENT

The statutory requirement that the appellant afford its transport facilities to all persons irrespective of race or color does not impose an undue burden on foreign commerce.

A. The requirement of the Michigan statute that accommodations be provided for all passengers regardless of race or color cannot be invalidated unless this Court determines that the requirement imposes an undue burden on commerce.

The doctrine that State legislation may be invalidated as conflicting with the interstate or foreign commerce clauses of the Federal Constitution, in the absence of Congressional exercise of the power granted to regulate the commerce, is rooted in the danger that diverse or conflicting State legislation may unduly impede national or international commerce. From *Gibbons* v. *Ogden* (9 Wheat. 1 [1824]), in which the Commerce Clause issue first reached the Court, to *Cooley* v. *Board of Wardens* (12 How. 299 [1851]), in which the Court adopted the basic principles which have since served as its guideposts, to its most recent decisions (see *Southern Pacific Railway* v. *Arizona*, 325 U. S. 761 [1945]); *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373 [1946]), this Court has found it necessary to make a judgment in each case as to the impeding effects upon commerce of the particular State regulation under attack.

As stated by this Court at the last term:

> • • • state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce a state may not interpose its local regulation. Too true it is that the principle lacks in precision. Although the quality of such a principle is abstract,

its application to the facts of a situation created by the attempted enforcement of a statute brings about a specific determination as to whether or not the statute in question is a burden on commerce. Within the broad limits of the principle, the cases turn on their own facts (*Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373, 377-378 [1946]).

As this Court has said in judging the validity of a State regulation, "reconciliation of the conflicting claims of state and national power is to be attained only by some appraisal and accommodation of the competing demands of the state and national interests involved" (*Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 769 [1944]).

B. There is no warrant for a determination that an undue burden is imposed on foreign commerce by the State's requirement of full and equal accommodations for Negroes.

In making its "ultimate determination • • • of the nature and extent of the burden which Michigan's regulation • • • imposes on" commerce, this Court must make an "appraisal and accommodation of the competing demands of the state and national interests involved" (*Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 796 [1944]).

(1) The State Interest.

The State statute as applied to the appellant requires that it provide accommodations and facilities to Negroes on its excursion vessels. The State interest in imposing such a requirement is the protection of the civil rights of its citizens against discrimination by reason of race or color. That this is a proper exercise of the State's police power, at least in cases involving intrastate commerce, is clearly established (*Railway Mail Association* v. *Corsi*, 326 U. S. 88 [1945]; *Greenberg* v. *Western Turf Association*, 204 U. S. 359 [1907]; *People* v. *King*, 110 N. Y. 418 [1888]. See, also, the cases collected in 49 A. L. R. 505, *et seq.*).

Michigan is not alone in the policy embodied in its Civil Rights Statute. Seventeen other States have enacted legislation requiring full and equal accommodations to all citizens on public conveyances and in other public places, without discrimination as to race or color.[1]

(2) The Appellant's Contention as to the Burden on Commerce.

The only suggestion in the case as to any actual burden on commerce are the unsupported testimony of the appellant's Assistant Manager that it "is the policy of the boat company to exclude Negroes on those boats, to insure the continued success of the enterprise" (R. 11); and the appellant's argument in its brief that it will be required, if the statute is upheld, to adopt a business policy as to carrying Negroes which appellant regards as undesirable, and that this policy might compel it to change the deck structure of its vessels, at great expense, in order to segregate Negroes and still provide equal accommodations (R. 17).

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[1] Cal. Civil Rights Stat., Secs. 51-52; Colo. Stats. 1935, Ch. 35, Secs. 1, 8; Conn. Gen. Stats. (Supp. 1933), Sec. 1676c; Ill. Rev. Stats. (1941), Ch. 38, Sec. 125; Ind. Stats. Ann. (Burns, 1933), Sec. 10-901; Iowa Code (1939), Sec. 13251; Kansas Gen. Stats. Ann. (1935), Sec. 21-2424; Mass. Laws (Michie, 1933), Ch. 272, Sec. 98, as amended in 1934; Minn. Stats. (Mason, 1927), Sec. 327.09; Neb. Comp. Stats. (1929), Ch. 23, Art. 1, Sec. 101; N. J. Rev. Stat., 10:1-2, 3, 5; N. Y. Civil Rights Law, Sec. 40; Ohio Code (Throckmorton, 1933), Sec. 12940; Pa. Stats. (Purdon), Tit. 18, Secs. 4653-4654; R. I. Gen. Laws (1938), Ch. 606, Sec. 28; Wash. Rev. Stats. (Remington, 1932), Sec. 2686 (statute does not specifically mention public conveyances, but is phrased in broad, general language); Wis. Stats. (1941), Sec. 340.75. See Konvitz, The Constitution and Civil Rights (1947), in which the statutes referred to have been collated. The enactment of these statutes followed the decision of the Supreme Court in the *Civil Rights Cases* (109 U. S. 3 [1883]) holding the Federal Civil Rights Act of 1875 unconstitutional as applied to discrimination against Negroes by individuals. The language of many of these statutes closely follows that of the Federal act. See Konvitz, Chs. 2 and 7.

This does not add up to an "undue burden" on commerce in the light of the "national interest" involved. The statute neither requires nor forbids segregation. If the appellant should choose to adopt a policy of segregating its white from its Negro passengers, it cannot complain of the costs of such segregation in attacking the statute. Moreover, numerous State regulations of interstate transportation requiring substantial financial outlays by carriers have been upheld by this Court. (See e.g., *Chicago R. I. & P. R. Co.* v. *Arkansas*, 219 U. S. 453 [1911], requiring full crews on interstate trains; *Terminal R. Ass'n* v. *Brotherhood of Railroad Trainmen*, 318 U. S. 1 [1943], requiring cabooses on freight trains; and see the cases collected in *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373, 378, Note 16 [1946].)

(3) The National Interest.

The gist of appellant's contention is that it is entitled to untrammelled freedom to bar Negroes from its vessels and that a restriction on that freedom is *ipso facto* an undue burden on commerce. This view completely misconceives the constitutional principle that a State regulation of commerce will not be invalidated unless it imposes an undue burden on commerce. Collision of the State regulation with a national interest which must be protected is essential in order to establish an undue burden on commerce.

There is no conflict between the State's requirement and the national interest in preventing impediments to commerce. There is no national interest in depriving Negroes of accommodations in interstate or foreign commerce. Indeed, there is a national interest to the contrary, which the Michigan statute seeks to carry out, namely, that full and equal accommodations be provided for all persons regardless of race or color (*McCabe* v. *Atchison, Topeka & Santa Fe Railway Co.*, 235 U. S. 151 [1914]; *Mitchell* v. *United States*, 313 U. S. 80 [1941]).

There is a well-defined national policy embodied in Congressional legislation in harmony with the Michigan statute. The Interstate Commerce Act requires common carriers subject to its provisions to provide equal facilities for all passengers, Negro or white (49 U. S. C., Sec. 3(1); see *Mitchell* v. *United States*, 313 U. S. 80 [1941]). Similar provisions apply to carriers by water and air (46 U. S. C., Sec. 815; 49 U. S. C., Secs. 484, 905).

In the recent Report of the President's Committee on Civil Rights, made pursuant to Executive Order 9808, To Secure These Rights (Gov. Printing Office, 1947), it is stated (pp. 76-77):

> **Discrimination in places of public accommodation.**—When we turn from public services supplied by government to those supplied by private enterprises, discrimination against minorities becomes more pronounced. Our social conscience has brought about an elimination of some of the most flagrant inequalities in the distribution of government services. But it is often blind to the serious effect upon the individual which results from the discriminatory rendering of service by private agencies.
>
> Most Americans patronize restaurants, theaters, shops, and other places offering service to the public according to their individual preferences and their ability to pay. They take their right to enter such places and to be served for granted. This is not the case with other Americans. Because of their race or their color or their creed, they are barred from access to some places and given unequal service in others. In many sections of this country, some people must pause and give thought before they enter places serving the public if they wish to avoid embarrassment, arrest, or even possible violence.

The Committee recommends the following proposal, *inter alia*, to deal with discrimination in public services (pp. 170-171):

> **The enactment by the states of laws guaranteeing equal access to places of public accommodation,**

broadly defined, for persons of all races, colors, creeds, and national origins.

Since the Constitution does not guarantee equal access to places of public accommodation, it is left to the states to secure that right. In the 18 states that have already enacted statutes, we hope that enforcement will make practice more compatible with theory. The civil suit for damages and the misdemeanor penalty have proved to be inadequate sanctions to secure the observance of these laws. Additional means, such as the revocation of licenses, and the issuance of cease-and-desist orders by administrative agencies are needed to bring about wider compliance. We think that all of the states should enact such legislation, using the broadest possible definition of public accommodation.

We submit that any proper appraisal of "the competing demands of the state and national interest" requires the conclusion that there is not the slightest Federal interest in striking down the Michigan prohibition against discrimination in providing services on public conveyances on account of race or color. There is, therefore, no undue burden on commerce.

C. The decisions of this Court sustaining the power of the States, in the absence of Congressional action, to enforce the common law rule of equal service against interstate common carriers support the constitutionality of the Michigan statute.

This Court has upheld the right of States, in the absence of Congressional action, to enforce the common law rule of equal service against interstate common carriers. In *Missouri Pacific Railway* v. *Larabee Mills* (211 U. S. 612 [1909]), the Court sustained the enforcement by judicial proceedings of the right of equal service against a railroad engaged in interstate commerce. The Court said (211 U. S. at pp. 619-620):

> • • • No legislative enactment, no special mandate from any commission, or other administrative board

> was necessary, for the duty arose from the fact that it was a common carrier. This lies at the foundation of the law of common carriers. Whenever one engages in that business the obligation of equal service to all arises, and that obligation, irrespective of legislative action or special mandate, can be enforced by the courts.

A State may provide a statutory penalty to be paid by a railroad engaged in interstate commerce for failure to comply with the similar common law duty that it promptly settle claims for loss of or damage to freight (*Atlantic Coast Line R. R.* v. *Mazursky*, 216 U. S. 122 [1910]). Similarly, States may, by statute, enforce the duty to deliver interstate telegraph messages and to transmit them without delay (*Western Union Telegraph Co.* v. *Jones*, 162 U. S. 650 [1896]; *Western Union Telegraph Co.* v. *Crovo*, 220 U. S. 364 [1911]).

It follows that a statutory requirement that equal service be afforded to all, when applied to an interstate public conveyance which is not a common carrier, is no more an interference with or burden on interstate or foreign commerce than such a requirement applied to a common carrier. The fact that the one was subject to such a requirement under the common law, while the obligation on the part of the other has been imposed by statute, in no way alters the effect of the requirement on interestate or foreign commerce.

This Court dealt with precisely such a contention in *Western Union Telegraph Co.* v. *Commercial Milling Co.* (218 U. S. 406 [1910]). It said (p. 414):

> This presents the seeming paradox that a prohibition against a limitation of liability, if prescribed by the common law, would be valid, and that a like prohibition, prescribed by a statute would not be.

It went on to say (pp. 416-417):

> We cannot concede such effect to the common law and deny it to a statute. Both are rules of conduct

proceeding from the supreme power of the State. That one is unwritten and the other written can make no difference in their validity or effect.

Nor does the fact that the vessel travels on waters beyond the jurisdiction of Michigan and has a terminus on a Canadian island affect the situation. A State, as well as the Federal Government, may legislate with regard to the duties of its citizens on the high seas and in foreign ports so long as there is no conflict with Congressional action (*The Hamilton*, 207 U. S. 398 [1907]; *Skiriotes* v. *Florida*, 313 U. S. 69 [1941]; *cf. United States* v. *Rodgers*, 150 U. S. 249, 264-265 [1893]; *Wilmington Transportation Co.* v. *California*, 236 U. S. 151 [1915]; *Port Richmond Ferry Co.* v. *Hudson County*, 234 U. S. 317 [1914]; *Anderson* v. *Pacific Coast S. S. Co.*, 225 U. S. 187 [1912]).

In *Skiriotes* v. *Florida* (313 U. S. 69, 73 [1941]), it was pointed out that a State may govern the conduct of its citizens even when they are in a foreign country "when the rights of other nations or their nationals are not infringed". Here we have a Michigan corporation which carries passengers from a Michigan port to a Canadian island which it wholly owns (aside from a small, fenced-off portion) and which apparently is used only by people brought to it by appellant. Thus there is no infringement on the rights of Canada or its nationals. Certainly, no such infringement has been shown.

Although the appellant is not a common carrier, it operates excursion boats which the court below has held are "public conveyances" within the meaning of the statute. Appellant's vessels are not small, private yachts. They are large boats, carrying more than 3,000 passengers each, making five trips a day and transporting approximately 500,000 passengers during each of the summer seasons of 1944 and 1945 (R. 6-7). Nor is appellant's business confined to a selected clientele; it advertises in the Detroit newspapers and on its street cars for passengers generally.

In short, this public conveyance is a large enterprise, holding itself out generally for public patronage, except that it refuses to carry Negroes.

It is submitted that by extending the common law duty of full and equal service to such public conveyances engaged in foreign commerce, Michigan has not imposed on the appellant an obligation which subjects commerce to an undue burden.

D. The Michigan statute presents no danger of conflicting State regulation of commerce since the Equal Protection Clause of the Fourteenth Amendment precludes statutes requiring discrimination.

The constitutional purpose behind the condemnation of State regulation of interstate or foreign commerce, where Congress has not acted, is the necessity of avoiding diverse or conflicting regulation which would unduly impede commerce. In the language of this Court in *County of Mobile* v. *Kimball* (102 U. S. 691, 697 [1880]):

> There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens, and against the products and citizens of other States. And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure uniformity of regulation against conflicting and discriminating State legislation.

See, also, *California* v. *Thompson*, 313 U. S. 930, 934 (1941).

We submit that the requirement of the Michigan statute, that full and equal accommodations and facilities be provided to all citizens, regardless of race or color, imposes no undue burden on interstate or foreign commerce, because any statute requiring or authorizing anything less would be unconstitutional as violative of the Equal Protection of the Laws Clause of the Fourteenth Amend-

ment. That clause provides that "no state shall • • • deny to any person within its jurisdiction the equal protection of the laws."

Under the decisions of this Court, no State has the constitutional power to enact legislation requiring the appellant to discriminate against Negroes by refusing them passage on its vessels or by denying to them accommodations, privileges or facilities granted to white persons (*McCabe* v. *Atchison, Topeka & Santa Fe Railway Co.*, 235 U. S. 151 [1914]; *Mitchell* v. *United States*, 313 U. S. 80 [1941]; *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337 [1938]).

In the *Mitchell* case, *supra*, the Court declared:

> The denial to appellant of equality of accommodations because of his race would be an invasion of a fundamental individual right which is guaranteed against state action by the Fourteenth Amendment (313 U. S. at p. 93).

The vice which has invalidated State regulations of interstate or foreign commerce, namely, that if the regulations were sustained, other States could, with equal right, impose conflicting and diverse regulations which would burden commerce, is, therefore, not present in the instant case. The Constitution itself, through the Equal Protection Clause, insures against a State requirement of discrimination on account of race or color in furnishing facilities or accommodations. The Michigan requirement of full and equal accommodations to all citizens alike carries out the constitutional "pledge of the protection of equal laws" (*Yick Wo* v. *Hopkins*, 118 U. S. 356, 359 [1886]; *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337, 350 [1938]); it cannot, therefore, be regarded as imposing an undue burden on foreign commerce.

Our contention that State regulation of interstate commerce may be held to be free of burdensome effects, in view of the restrictive effects of other provisions of the Constitution, is not new. The interplay between the Com-

merce Clause and the Fourteenth Amendment has been an important factor in sustaining State regulation of interstate commerce in the area of taxation (*McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33 [1940]; *International Harvester Co.* v. *Dept. of Treasury*, 322 U. S. 340 [1944]).

In determining whether the validation of a State tax would subject interstate commerce to a risk of undue cumulative tax burdens, the Court has considered the effect of the Due Process Clause in restricting the taxing powers of other States. A basic consideration in the sustaining of certain State tax levies affecting interstate commerce has been the inability of other States to tax the same transaction, not because of the Commerce Clause, but because of the restrictions on extraterritorial taxation imposed on the States by the Due Process Clause.

Mr. Justice Rutledge has illumined this interrelation between the Commerce Clause and the Due Process Clause in two recent opinions (*International Harvester Co.* v. *Department of Treasury et al., supra;* and *Freeman* v. *Hewit*, 329 U. S. 249 [1946]). In the latter case Mr. Justice Rutledge said (at p. 271):

> Selection of a local incident for pegging the tax has two functions relevant to determination of its validity. One is to make plain that the state has sufficient factual connections with the transaction to comply with due process requirements. *The other is to act as a safeguard, to some extent, against repetition of the same or a similar tax by another state.* (Our emphasis; footnote omitted.)

See also McNamara, *Jurisdictional and Commerce Problems*, 8 Law and Contemporary Problems 482 (1941).

The principle applied in the tax cases affecting interstate commerce is, we believe, applicable to the instant case. In the cases referred to, the Due Process Clause made it impossible for other States to add to the burden of the tax on the transaction under attack, with the result that the levies were sustained. So, here, the Equal Protection Clause precludes diverse or conflicting State action respecting equal accommodations and facilities. Consequently,

as in the tax cases, the regulation is valid, for in the absence of the risk of an undue burden on commerce, the statute is a proper exercise of the State's police power.

E. The cases invalidating State legislation forbidding or requiring the segregation of Negroes and white passengers are inapplicable to the present case, which involves a total denial of accommodations on account of race or color.

This is not a segregation case; it is a case of the denial of all accommodations and facilities because of race or color. For that reason, the cases of *Hall* v. *De Cuir* (95 U. S. 485 [1877]) and *Morgan* v. *Commonwealth of Virginia* (328 U. S. 373 [1946]), relied on by the appellant, are inapplicable. Those cases dealt with the issue as to whether a State could require in the one case and prohibit in the other the segregation of Negroes and white persons on interstate carriers.

The basis for those decisions was that if statutes of the type there involved were upheld, interstate carriers might be subjected to diverse regulation which would make necessary the shifting of passengers as the carrier moves from State to State. The burden which might be imposed by such divergent requirements was determined to be a sufficient impediment to commerce to require invalidation of the statutes. Nothing in the cases gives substance to the contention that the extension to public conveyances of the common law duty of common carriers to serve all comers, irrespective of race or color, would create an undue burden on commerce.

The statute here, as we have shown, cannot be attacked because of the danger of divergent regulation. There is nothing to prevent appellant from admitting all races and creeds on an equal basis and maintaining that basis in all its operations. On the other hand, nothing can be found in the *Hall* or *Morgan* cases which supports the view that the regulation, by itself and without regard to the possible actions of other States, places an undue burden upon commerce. We cannot believe that this Court will hold that a requirement that a public carrier refrain from

selecting its passengers on a racial basis is a burden on the commerce which the federal government is empowered to protect.

CONCLUSION

In prohibiting public conveyances from discriminating against Negroes in furnishing accommodations, Michigan, along with 17 other States, has carried out a policy of equality which is written into the Federal Constitution. The statute is in keeping with Federal legislation dealing with common carriers and is in line with the best American tradition. Unless the Michigan statute collides with a paramount Federal interest in permitting the States to require anything less than equal facilities for persons of all races and colors, the enactment is not in conflict with the Foreign Commerce Clause.

We would be shocked to learn that the commerce power is a shield protecting public conveyances against State interdiction of discrimination against Negroes. The entire judicial history of the commerce power negates this view. We submit that the Michigan statute as applied to the appellant is constitutional.

Respectfully submitted,

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